



Kentucky  
Physical Therapy  
Association



Kentucky  
Speech-Language-Hearing  
Association

***Response to Request for Stakeholder Input on Certificate of Need Modernization from the Kentucky Occupational Therapy Association, Kentucky Physical Therapy Association and the Kentucky Speech-Language-Hearing Association***

**Introduction**

The practitioners in the fields of Physical Therapy, Occupational Therapy, and Speech-Language Pathology applaud the Cabinet's efforts to modernize the Certificate of Need process to better reflect the changing world of health care.

We share the Cabinet's principles relating to this modernization effort. The therapies believe modest changes to the 'physician exemption' will allow the Cabinet to better reach its goals relating to improved access, quality, and value of care. Kentucky is one of only 3 states that have a Certificate of Need for the therapies.

The CON process continues to be confusing for practitioners of the therapies, and many may unwittingly be out of compliance with current CON regulations. These professionals are licensed and certified by their respective professional Boards in Kentucky, and through this process, the public is protected from 'bad actors.' The effort to expand the network of providers in the Commonwealth will be greatly served by establishing in regulation an exemption specific to these therapies.

Additionally, the Commonwealth of Kentucky should exempt all therapies (PT / OT / SLP), *regardless of business structure*, from the CON process, as is the case in an additional 46 states across the nation.

**Recommendation**

Remove references to OT, PT, SLP in Section 3(1)(a).

Create a new Section 3(4) to the following:

A practice owned entirely by an occupational therapist licensed pursuant to KRS 319A, a physical therapist licensed pursuant to KRS 327, a speech-language pathologist licensed pursuant to KRS 334A, or a group of occupational therapists, physical therapists, or speech-language pathologists that has demonstrated the following:



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- (a) The practice claiming the exemption primarily provides occupational, physical and/or speech-language therapy services (\*\*e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;
- (b) Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions *requiring therapy services* are being treated by the practice;
- (c) Compliance with subsection 1(e), (f) and (g) of this section; and
- (d) Nothing in this section shall limit or prohibit the practice claiming the exemption from employing occupational therapists, occupational therapy assistants, physical therapists, physical therapy assistants, speech-language pathologists or speech-language pathology assistants.

### Reasoning

Under state law, the therapies are not required to be supervised by physicians. Patients have enjoyed this direct access for some time, leading to improved health outcomes and lower administrative costs.

In a physicians' practice where multiple physicians own the practice, the owner-physicians do not direct the treatment of a patient whose care is being managed by a non-owner physician. This would slow down the delivery of care and add to the administrative cost, while doing nothing to improve the quality of care or to better protect the consumer. Similarly, in a therapy practice offering multiple types of therapy, an owning therapist need not direct the treatment provided by an employee therapist. Direct care provided by licensed therapists protects the consumer while being cost-effective. Another layer of unnecessary supervision only adds to the cost of care, which inevitably gets passed on to the consumer.

We consider the CON laws to be in conflict with the principle of direct access as it pertains to the therapies. Owners of therapy clinics, especially those who are licensed and practicing, should not have their scope of the practice restricted simply because it is outside the scope of the owner's therapy practice. This is counter to the policy of direct access for the patient and creates unnecessary barriers to care by increasing costs.

An important example of the need for CON modernization is the First Steps program, a pediatric therapy Waiver program. These licensed practitioners have been providing the highest quality care to consumers for years. The cumbersomeness and uncertainty of the CON process is



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very complex and costly for these small operators who generally work with specialized and vulnerable populations. Most of these small practices would not have the financial resources to conduct a market needs assessment and other required documentation. The need to go through the CON process will likely force many of these providers to consider other employment. Rather than drive these providers away from providing specialized care, especially to Medicaid recipients, the Cabinet should exempt the therapies from the CON process. Rather than carve this one program out—which would be a step backwards from a comprehensive modernization of the CON process and the expansion of services related to the Affordable Care Act —these providers could be encouraged to expand their consumer base.

The therapies would prefer that the Cabinet make the suggested changes in regulation. But if the need arose, an alternative would be to seek the therapy exemption in statute. This would be much more difficult and may antagonize other providers or facilities.

Physical Therapists, Occupational Therapists, and Speech-Language Pathologists all agree that Kentucky's health care system and health care outcomes would benefit greatly from a thoughtful modernization of the Certificate of Need process, making this system better fit the changing world of medicine and health care. We hope that the Cabinet will see the therapies to be the critical piece of the provider network that they have become, and to encourage them to spend more of their time focusing on the provision of care and expanding their consumer base.

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